IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 14TH MARCH, 2007 / 23RD PHALGUNA 1928

OP.No. 6185 of 2003(J)

PETITIONER:

SHAJAN N.R., (FORMERLY ASSISTANT SUB INSPECTOR OF POLICE, RAJAKKAD POLICE STATION), NEDUMATTATHIL HOUSE, RAJAKKAD P.O., MULLAKKANAM, PIN - 685 566.

BY ADV. SRI.S.P.ARAVINDAKSHAN PILLAY
SMT.N.SANTHA
SRI.V.VARGHESE

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY ITS CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.

2. SUPERINTENDENT OF POLICE, IDUKKI.

BY GOVERNMENT PLEADER SHRI. SANDESH RAJA

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 14/02/2007, THE COURT ON 14.3.2007 DELIVERED THE FOLLOWING:

OP 6185/03

ORDER ON IA 6066/03 IN OP 6185/03

DISMISSED.

SD/- ANTONY DOMINIC,JUDGE.

14/3/2007

APPENDIX

PETITIONER'S EXTS.

EXT.P1 TRUE COPY OF THE MEMO OF CHARGES NO.1911/A1/96/VIG. DATED 18.5.1996 WITH THE STATEMENT OF ALLEGATIONS APPENDED.

EXT.P2 TRUE COPY OF THE EXPLANATION SUBMITTED BY THE PETITIONER BEFORE THE JOINT SECRETARY (ENQUIRY) VIGILANCE (A) DEPARTMENT DATED 15.7.96.

EXT.P3 TRUE COPY OF THE SHOW CAUSE NOTICE NO.8757/A1/98/VIG DATED 21.10.1998 BY GOVERNMENT

EXT.P3(a) TRUE COPY OF THE APPENDED REPORT OF THE VIGILANCE TRIBUNAL.

EXT.P4 TRUE COPY OF THE DETAILED REPLY SUBMITTED BY THE PETITIONER BEFORE THE ADDITIONAL SECRETARY, VIGILANCE (A) DEPARTMENT, THIRUVANANTHAPURAM.

EXT.P5 TRUE COPY OF THE G.O.(Rt) NO.35/2001/Vig DATED 25.1.2001.

EXT.P6 TRUE COPY OF THE ORDER NO.H1-5575/2001-Id DATED 5.3.2001 OF THE SUPERINTENDENT OF POLICE, IDUKKI.

EXT.P7 TRUE COPY OF THE REVIEW PETITION SUBMITTED BY THE PETITIONER BEFORE THE GOVERNMENT DATED 23.4.2001.

EXT.P8 TRUE COPY OF THE G.O.(Rt) NO.275/2001/Vig. DATED 8.10.2001.

EXT.P9 TRUE COPY OF THE JUDGMENT IN O.P.12120/2001-P DATED 27.9.2002 OF TH IS HONOURABLE COURT.

EXT.P10 TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE FIRST RESPONDENT DATED 26.10.2002.

EXT.P11 TRUE COPY OF G.O.(Rt) NO.25/2003/Vig DATED 29.1.2003.

ANTONY DOMINIC, J.

O.P. 6185/2003

Dated this the 14th day of February, 2007

JUDGMENT

While working as a Head Constable in the Rajakkad Police Station in Idukki District, the petitioner is alleged to have committed certain misconducts with the active connivance of the Sub Inspector of Police. It was alleged that on 10th August, 1992 they demanded and obtained illegal gratification for releasing on bail an accused, who was arrested in a forest offence, and for transferring the case to the Forest Department.

2. It is seen that proceedings were continued against him and ultimately resulted in an enquiry, conducted by the Vigilance Tribunal, which submitted Ext.P3A report finding the petitioner guilty of the misconduct and recommending punishment of compulsory retirement from service. On receipt of the report from the Vigilance Tribunal, disciplinary authority forwarded a copy of the report along with Ext.P3, a show cause notice, calling upon the petitioner to show cause why the provisional decision of the Government to compulsorily retire the petitioner from service should not be

confirmed. Responding to Exts.P3 and P3A, the petitioner submitted Ext.P4 reply. Ext.P4 is a lengthy reply, wherein the petitioner had dealt with the entire matter and also how the charges, levelled against him, were not proved and also that the findings contained in Ext.P3A were perverse being inconsistent with the evidence. The petitioner concluded Ext.P4 by requesting that he be exonerated from the charges and reinstated in service.

3. It is seen that thereafter, the first respondent issued Ext.P5 compulsorily retiring the petitioner from service, with effect from the date of his suspension. In pursuance to Ext.P5 the second respondent, the disciplinary authority, issued Ext.P6 implementing Ext.P5 order of the Government. The petitioner filed a Review Petition, Ext.P7, invoking powers under Rule 35 of the Kerala Civil Services Classification Control and (Rules), 1960, which was considered by the competent authority and was rejected by Ext.P8.

4. Seeking to quash the proceedings against him, the petitioner had filed O.P.12120/2001 before this Court and the case was disposed of by Ext.P9 judgment, quashing Ext.P8 and directing the first respondent to re-consider the matter in

accordance with law, after hearing the petitioner and to pass order within three months from the date of receipt of a copy of the judgment. Proceeding further, this Court declared that the effective date of compulsory retirement imposed on the petitioner can only be the date of passing of order, as directed in the judgment and that the said order cannot have any retrospective effect. In obedience with the direction of this Court as contained in Ext.P9 judgment, which was forwarded by the petitioner under cover of Ext.P10, Government have passed Ext.P11 order dated 29.1.2003, stating that they find no reason to deviate from their earlier stand and rejected Ext.P7 Review Petition, filed by the petitioner. It is seeking to quash Exts.P5, P6 and P11 and for a direction to the respondents to reinstate him in service with consequential benefits that this writ petition is filed.

5. The counsel for the petitioner urged three points. He contends that before issuance of Ext.P3 imposing the punishment of compulsory retirement, the petitioner was not given a copy of Ext.P3A, the Enquiry report submitted by the Vigilance Tribunal. Thus he was denied an opportunity to file his representations against the findings of the Tribunal before its acceptance by the Disciplinary Authority and thus prejudice

had been caused. Thus, the action taken in pursuance to Ext.P3A report, being in violation of the principles of natural justice, all further proceedings are liable to be set aside and he is entitled to be reinstated. In support of his above contention, the counsel makes reference to the judgment of the Supreme Court in the case **Managing Director, ECIL, Hyderabad, and Others v. B.Karunakar and Others (1993 (4) SCC 727)**, and this in **K.S.R.T.C. v. Abdul Latheef (2005 (3) KLT, 955), Radhakrishnan Nair v. State of Kerala (2005 (3) KLT 1)** and **Shaji Lukose v. State of Kerala (2007 (1) KLT 679).** It is also contended that the Sub Inspector, who alone had the authority to enlarge the accused on bail and who was also proceeded along with the petitioner was imposed only a minor punishment of barring of three increments with cumulative effect and that the petitioner, a person who was much lower in rank has been imposed the capital punishment of compulsory retirement. The punishment so imposed, according to the counsel, is discriminatory and too disproportionate warranting to be interfered with.

6. Yet another contention raised by the counsel for the petitioner is that by Ext.P9 judgment, the respondents were

directed to re-consider the matter and pass a speaking order, this Court had declared that the effective date of compulsory retirement will be the date of the order to be passed following Ext.P9 Judgment and that the said order cannot have retrospective effect. According to the counsel, despite such declaration made in Ext.P9, while issuing Ext.P11 dated 29.1.2003, the Government have reiterated their position which they took while issuing Exts.P5 and P6 by giving effect to the compulsory retirement from the day on which he was placed under suspension, namely, 22.10.1998.

7. On the other hand, the learned Government Pleader would submit that though it is the admitted position that a copy of the enquiry report was not furnished to the delinquent prior to issuance of Ext.P3, the petitioner has not suffered any prejudice in the process and therefore, the further proceedings taken on the basis of the report cannot be interfered with. He makes reference to the decision of the Apex Court in the case of **Managing Director ECIL, Hyderabad and Others v. B.Karunakar and Others (1993 (4) SCC 727), State of U.P v. Hareendra Arora and another (2001 (6) SCC 392), Oriental Insurance Company Limited v. S.Balakrishnan (2003 (11) SCC**

734), N.T.C (WBAB and O) Limited and another v. Anchan K. Saha (2004 (7) SCC 581) and **Canara Bank v. V.K.Awasthy (2005 (6) SCC 321).** In so far as the plea of the petitioner of the discrimination in the imposition of compulsory retirement is concerned, the Government Pleader would submit that the misconduct proved against the petitioner and the Sub Inspector being different, and the punishment imposed will vary depending upon the gravity of the mis conduct, found to have been committed and hence, the plea of discrimination has no substance. In so far as the plea of retrospectivity based Ext.P9 judgment of this Court is concerned, the Government Pleader accepts the position that Ext.P11 has to be consistant with Ext.P9 judgment.

ANTONY DOMINIC
JUDGE

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